

STATE OF MICHIGAN
COURT OF APPEALS

TERRENCE COX and OLIVIA COX,

Plaintiffs-Appellants,

UNPUBLISHED
July 24, 2001

v

No. 222809
Court of Claims
LC No. 98-017137-CM

DEPARTMENT OF ENVIRONMENTAL
QUALITY,

Defendant-Appellee,

and

TOWNSHIP OF SUMMERFIELD,

Defendant.

Before: Wilder, P.J., and Hood and Griffin, JJ.

PER CURIAM.

Plaintiffs appeal as of right the order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(8) in this inverse condemnation action. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant issued a mining permit to George Musson of Musson Sand and Stone, Inc., to excavate sand from a parcel adjacent to plaintiffs' land. The permit stated that Musson shall not cause a drawdown of the water table at any time. Plaintiffs supplied defendant with a report showing that the mining operations had lowered the water table on their property. Defendant directed Musson to cease mining operations and to prepare a plan to prevent the drawdown.

Plaintiffs brought this inverse condemnation action, asserting that defendant actively facilitated the taking of their property. The Court of Claims granted defendant's motion for summary disposition, finding that the issuance of a permit or failure to enforce a permit is not a taking of private property for public use, and did not violate Const 1963, art 10, § 2.

A motion for summary disposition under MCR 2.116(C)(8) tests the legal sufficiency of a claim by the pleadings. This court will review de novo a decision on a motion for summary

disposition under MCR 2.116(C)(8). *Smith v Kowalski*, 223 Mich App 610; 567 NW2d 463 (1997).

Inverse condemnation is the taking of private property for public use without commencement of condemnation proceedings. *Hart v Detroit*, 416 Mich 488, 494; 331 NW2d 438 (1982). To establish a taking, a plaintiff must show that the government's actions were a substantial cause of the decline of his property's value, and the government abused its legitimate powers in affirmative actions directly aimed at the plaintiff's property. *Attorney General v Ankersen*, 148 Mich App 524, 561; 385 NW2d 658 (1986). The granting of a license to a citizen or corporation cannot be regarded as a taking where the license does not in any way grant the public the right to use the property. *Id.* at 562. The state's action in licensing and supervising an operation does not constitute affirmative action directly aimed at the property. *Id.*

Plaintiffs argue that this is a taking by physical occupation rather than a regulatory taking. However, plaintiffs still must establish that the government caused the property damage. *Peterman v Dep't of Natural Resources*, 446 Mich 177; 521 NW2d 499 (1994). There was no affirmative action by defendant to authorize the damage. Although a mining permit was issued, it provided that the mining shall not cause a drawdown in the water table at any time. The mining company violated the condition of the permit by causing such a drawdown. The action of the company was taken in contravention to the permit, rather than authorized by the permit. Defendant's failure to take legal action against the mining company is not an affirmative act.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Harold Hood
/s/ Richard Allen Griffin